

1 UNITED STATES BANKRUPTCY COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK
3 Case No. 09-50026

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5 In Re:

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7 GENERAL MOTORS CORPORATION, et al.,

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9 Debtors.

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13 United States Bankruptcy Court
14 One Bowling Green
15 Courtroom 621 (REG)
16 New York, NY 10004-1408

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18 March 29, 2012

19 9:37 AM

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21 B E F O R E:

22 HON. ROBERT E. GERBER

23 U.S. BANKRUPTCY JUDGE

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1 Hearing on Notice of Proposed Order Approving Environmental
2 Settlement Agreement between the Debtors and The United States
3 of America

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25 Transcribed by: Donald Cohen

1 A P P E A R A N C E S :

2 U.S. DEPARTMENT OF JUSTICE

3 U.S. Attorney's Office

4 86 Chambers Street, 3rd Floor

5 New York, NY 10007

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7 BY: JOSEPH N. CORDARO, ESQ.

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P R O C E E D I N G S

THE COURT: Okay, we have a fair number of matters today, but I think the bulk of them will not require a lot of time. I'm going to start with the 9:30 calendar, and for anybody who is ready, move straight to 9:45.

Let's start with GM Motors Liquidation Corporation.

MR. CORDARO: Good morning, Your Honor.

Joseph Cordaro, from the U.S. Attorney's Office --

THE COURT: Good morning, Mr. Cordaro. How are you?

MR. CORDARO: -- on behalf of the United States.

Ordinarily, Ms. Natalie Kuehler, who I'm sure you're familiar with, would be appearing. She is not appearing today for medical reasons, so I'm taking over for her.

THE COURT: Oh, I'm sorry to hear that.

MR. CORDARO: I rise respectfully to seek the Court's approval. A non-owned site settlement agreement lodged on January 30, 2012. This agreement resolves debtors' environmental liabilities with respect to three sites indicated on the government's second proof of claim. Those are the Diamond Alkali site in New Jersey, the Kane Lombard site in Maryland, and the Hayford Bridge site in Missouri. And I'll just very briefly summarize the terms of the agreement, as I'm sure Your Honor's familiar with them. But in essence, EPA will be getting a general unsecured claim of approximately \$20.9 million; approximately \$19.5 million of that would be allocated

1 to a general unsecured claim for the Diamond Alkali site in New
2 Jersey and approximately one point four would be going to the
3 Hayford Bridge site as a general unsecured claim -- that is the
4 Missouri site.

5 EPA also will be paid a total of approximately \$2.9
6 million for the cost of remedial work. That payment will be
7 made by the Westchester Fire Insurance Company in connection
8 with performance bonds, and that will be broken down as
9 follows: approximately \$2.4 million will be going to the Kane
10 Lombard site in Maryland -- that's the site that does not have
11 a general unsecured claim that I just described, and then
12 approximately \$448 thousand will be going to the Missouri site,
13 the Hayford Bridge site.

14 As indicated in our motion, approval is not necessary
15 under Rule 9019, but the government seeks approval under
16 environmental law. And under environmental law, the Court
17 conducts its own review of the proposed settlement in order to
18 --

19 THE COURT: Pause please, Mr. Cordaro.

20 MR. CORDARO: Yes.

21 THE COURT: This is pretty much the same drill, or
22 undertaking that we've engaged in with your predecessor
23 environmental settlements, am I correct?

24 MR. CORDARO: You have, Your Honor. And it is
25 similar, in many respects, to the natural resource damage

1 settlement that was entered into with five or six sites last
2 year. It is similar, in many respects, to agreements that have
3 been before Your Honor.

4 THE COURT: So I'm going to look out for the public
5 interest as well as the creditors.

6 MR. CORDARO: That's correct, Your Honor.

7 And the Court makes a determination as to whether the
8 settlement agreement is fair, reasonable, in the public
9 interest, and furthers the goals of CERCLA. Under the case law
10 of this Circuit, the Court affords the United States deference
11 in its determinations along those lines. Here the United
12 States has determined that the proposed settlement is fair,
13 reasonable, in the public interest, and furthers the goals of
14 CERCLA.

15 Notice of the proposed settlement was published in
16 the Federal Register on February 3 -- a 30-day comment period
17 was provided; the United States received no comments. In
18 addition, there have been no objections to the motion.

19 With respect to fairness, the settlement agreement is
20 the product of arms-length negotiation involving experienced
21 counsel and government actors. And also, the parties took into
22 account the total response costs at the sites and potential
23 liabilities in fixing the final numbers that Your Honor sees in
24 the settlement agreement. In that respect, it also provides
25 satisfactory compensation for the public and also furthers

1 CERCLA's interest of discouraging litigation.

2 And unless the Court has any further questions, we
3 would respectfully request that Your Honor enter the proposed
4 order that was submitted via ECF.

5 THE COURT: I have only one, Mr. Cordaro, and it's a
6 little one. Did I understand you correctly to say that because
7 of the nature of the GM plant, I only have to review it now
8 from the public interest, and no longer have to look at it from
9 the perspective of creditors' best interest?

10 MR. CORDARO: I believe that is correct, Your Honor.
11 And --

12 THE COURT: But, of course, it would be academic if
13 I found, like the other settlements, that it was in that sweet
14 spot where it was in everybody's interest.

15 MR. CORDARO: I think it would be academic, Your
16 Honor, because understand that the factors the Court would look
17 at for 9019 are somewhat similar to the factors here. My
18 understanding --

19 THE COURT: Well, forgive me for interrupting you --

20 MR. CORDARO: Sure.

21 THE COURT: -- Mr. Cordaro, because you answered my
22 question, and the settlement is so plainly in the interest of
23 both that I'm going to give you findings right now.

24 For the reason -- and because I have a full
25 Courtroom, I'm not going to state them as extensively as I

1 otherwise might. For the reasons stated by Mr. Cordaro, I find
2 that the government did its job, that the public interest has
3 been protected by reason of the arm's-length negotiations and,
4 of course, with my discretion being further assisted by the
5 fact that there were no objections from the public interest
6 side during the extensive comment process articulated by Mr.
7 Cordaro.

8 If, and to the extent, it's necessary I find that it
9 is also within the range of reasonableness that would be part
10 of any 9019 analysis. The settlement is in everybody's
11 interest for a host of reasons and it will be approved. And
12 you or Ms. Kuehler, or one of your colleagues -- hopefully,
13 she'll be better soon -- can give me an order consistent with
14 this ruling, at your earliest convenience.

15 MR. CORDARO: I will do that as soon as I get back
16 to the office, Your Honor.

17 THE COURT: Very good. Thank you very much, Mr.
18 Cordaro.

19 MR. CORDARO: Thank you, Your Honor.

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21 (Whereupon these proceedings were concluded at 9:43 AM)
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I N D E X

RULINGS

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Agreement between Debtors and the U.S.		
- approved		

C E R T I F I C A T I O N

I, Donald Cohen, certify that the foregoing transcript is a
true and accurate record of the proceedings.

Donald
Cohen

Digitally signed by Donald Cohen
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Date: March 29, 2012